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The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No.10/507,088 in view of Sugane et al 2001/0050046. The copending application claims a system for treating articles which is comprised of the following elements: a treatment bath or container into the articles are dipped thereby treating the articles therein; a feed device for feeding the articles through the system and are dipped into the treatment bath or container wherein the feed device comprising a feed carriage which in turn comprises the following: running gear movable along the path of motion of the articles having its own drive; at least one swivel arm hingedly coupled to the running gear; a holding device hingedly coupled to the swivel arm for at least one article; and mutually independently actuatable drives for translational movement, the swivelling of the

at least one swivel arm and of the holding device. The copending application claims a dripping zone is disposed in a direction of motion downstream of a last bath. The copending application fails to disclose that the at least one bath is a plurality of treatment containers and at least two treatment containers are disposed one immediately downstream of the other without the interposition of a dripping zone. However, it would have been obvious to modify the copending application to include a plurality of treatment containers or baths rather than a single treatment bath or container for the obvious reason to increase the flexibility in use of the treatment apparatus by enabling one to apply more than one type of treatment liquid to the article. Further, it would have been obvious given the modifications of the copending application as discussed above to arrange at least two of the treatment containers such they are immediately downstream of the other without the interposition of a dripping zone since Sugane et al shows arranging at least two treatment tanks such they are directly adjacent one other or are arranged in series without a dipping zone or stage interposed or arranged between the treatment tanks for the obvious reason to minimize space requirements of the apparatus. Note Sugane et al at column 6 lines 62-65 teaches that the dipping baths are in series or one directly and silent as to a dripping zone or dripping container therebetween thereby reading on two treatment containers disposed one after the other without the interposition of a dripping zone. Further, Sugane at column 7 lines 22-35 recites that the plurality of treatment baths in series enables to provide a compact treatment apparatus thereby reducing the space requirements of the treatment apparatus.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO-02-053482 in view of Sugane et al 2001/0019004.

WO '482 teaches a system for treating articles, comprising: a plurality of treatment containers, in which the articles may be acted upon in each case by a treatment liquid; a feed device, by means of which the articles are conveyed through the system and in the process are dipped successively into the treatment containers, the feed device comprising at least one feed carriage which in turn comprises: running gear movable along the path of motion of the articles; at least one swivel arm 41a, 43b hingedly coupled to the running gear; a holding or supporting device 6 hingedly coupled to the swivel arm for at least one article and, mutually independently actuatable drives for translational movement, the swivelling of the at least one swivel arm and of the holding device. WO'482 fails to teach that the at least two treatment containers are disposed

one immediately downstream of the other without the interposition of a dripping zone. However, it would have been obvious to modify WO '482 apparatus such that treatment tanks 2,3 are disposed one immediately downstream of the other without the interposition of a dripping zone since Sugane et al shows arranging the treatment tanks of a dipping apparatus directly adjacent or in series without the interposition of a dripping zone obviously to minimize space requirements of the treatment apparatus. Thus claim 1 is obvious over the above cited references.

Applicant's arguments filed 9/14/2007 have been fully considered but they are not persuasive.

Applicant's argument that Sugane et al fails to teach at least two treatment containers are disposed one immediately downstream of the other without the interposition of a dripping zone is found to be non-persuasive. Sugane et al at column 6 lines 62-65 teaches that the dipping baths are in series or one directly and adjacent to a dripping zone or dripping container therebetween thereby reading on the two treatment containers disposed one after the other without the interposition of a dripping zone. Therefore, it would have been obvious to modify WO '482 apparatus such that treatment tanks 2,3 are disposed one immediately downstream of the other without the interposition of a dripping zone since Sugane et al shows arranging the treatment tanks of a dipping apparatus directly adjacent or in series without the interposition of a dripping zone obviously to minimize space requirements of the treatment apparatus.

Applicant's argument that there is no obvious reason provided from either Sugane et al or WO '482 to minimize the space requirements of the treatment

apparatus by arranging the at least two treatment containers such that they are disposed one immediately downstream of the other without the interposition of a dripping zone is found to be non-persuasive. Sugane at column 7 lines 22-35 recites that the plurality of treatment baths are in series which enables one to provide a compact treatment apparatus thereby reducing the space requirements or installation space of the treatment apparatus which is a desired goal of the Sugane et al treatment assembly.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Neumann and Polster each show a treatment apparatus which includes at least two treatment containers wherein the at least two treatment containers are disposed one immediately downstream of the other without the interposition of a dripping zone.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda A. Lamb whose telephone number is (571) 272-1231. The examiner can normally be reached on Monday-Tuesday and Thursday with alternate Wednesdays and Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nadine Tucker, can be reached on (571) 272-1465. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Brenda A Lamb
Examiner
Art Unit 1734

/Brenda A Lamb/

Primary Examiner, Art Unit 1792